THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23707 OF2005

DATED:15.11.2005

Between:

Toddy Tappers Cooperative Society, Kistapur

Doma Mandal, Ranga Reddy District,

Rep. by its President Mr.S.Narasaiah

S/o.Ramaiah, R/o.Kistapur

…Petitioner

And

The Proh. & Excise Inspector

Excise Station, SHO, Parigi, Ranga Reddy District

and others

…Respondents

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ORDER:

Toddy Tappers Cooperative Society (TCS) Kistapur is the petitioner. It assails Crime No.329/2005-2006, dt.6.9.2005 and proceedings of second respondent dt.12.9.2005 suspending the TCS licence granted to the petitioner. The petitioner prays for declaring the suspension order as illegal, and for further declaration that the action of the respondents in not sending second sample bottle of toddy to an independent laboratory as per Rule 24 of A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 (hereafter called, the Rules), as illegal and arbitrary. The first respondent herein inspected the toddy shop of the petitioner on 6.9.2005 at 5.00 p.m. and found that the toddy was allegedly adulterated with chloral hydrate which is a prohibited substance. He therefore registered crime No.329/2005-2006 and

arrested accused No.1. He also took samples of chloral hydrate as well as toddy being sold at the time of search. A report was submitted to second respondent by proceedings dt.12.9.2005 suspending licence No.291, dt.1.4.2002 issued to the petitioner TCS. The petitioner, who was allegedly laid up with ill-health in an hospital made an application to second respondent on 26.10.2005 requesting to send one of the samples to independent laboratory as required under Rule 24 of the Rules, in vain. Therefore, present Writ Petition is filed.

There is some amount of controversy as to whether President or Nowkarnama of the TCS was present on 6.9.2005 at the time of inspection by the first respondent. As per Rule 24 of the Rules, if the sample of toddy is taken in the absence of licensee or Nowkarnama, the licensee is required to request the competent authority within a period of seven days from the date of search to send sample bottle to an independent laboratory. As per Rule 24 of the Rules, as amended by G.O.Ms.No.1120 dt.11.11.2003, if the inspection/search is conducted in the absence of licensee or Nowkarnama, the licensee is given liberty to request to send sample bottle to independent laboratory within a period of seven days from the date of drawal of the sample. The petitioner asserts that as he was not able to attend the shop due to ill-health there was somebody attending the shop and therefore application made by him on 26.10.2005 was within time.

In view of the controversy, this Court summoned the file from the office of first respondent which would show that the petitioner or Nowkarnama were not present on 6.9.2005 when the first respondent inspected the Kistapur shop of TCS. On this limited ground alone, the request of the petitioner to send sample bottle to independent laboratory can be considered by second respondent.

Insofar as the challenge to suspension order dt.12.9.2005 is concerned, in view of availability of speedy, effective and efficacious alternative remedy under Section 63(1) of the A.P.Excise Act, 1968, enabling the petitioner to file appeal before the jurisdictional Deputy Commissioner of Prohibition and Excise, this Court is not inclined to go into merits of the case. Liberty is given to the petitioner to file appeal before the Deputy Commissioner of Prohibition and Excise, which shall be considered in accordance with law.

In view of the above observations and directions, the Writ Petition is disposed of directing respondents 1 and 2 to take necessary steps to send sample bottle of toddy to an independent laboratory, i.e., Institute of Preventive Medicine, Public Health, Food Laboratory and Food Administration, Nacharam, Hyderabad, immediately. The petitioner is also given liberty to file appeal before the Deputy Commissioner against suspension order.

(V.V.S.RAO, J)

15.11.2005

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